

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SUNPOWER CORPORATION, *et al.*,¹
Debtors.

Chapter 11

Case No. 24-11649 (CTG)

Jointly Administered

LIMITED OBJECTION TO SALE

Arevon Energy, Inc., Solar Star Always Low Prices IL, LLC, Kern High School District Solar (2), LLC, SunPower Commercial Holding Company III, LLC, SunPower Commercial Holding Company II, LLC, SunPower Commercial Holding Company I, LLC, Solar Star California XXX, LLC, Solar Star California XXX (2), LLC, Solar Star California XXXII, LLC, and Northstar Macys Maryland 2015, LLC (collectively, the “Arevon Entities”) hereby file this limited objection to the *Motion of Debtors for Entry of an Order (I) Authorizing and Approving the Sale of the Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests, (II) Authorizing and Approving Entry Into the Definitive Agreements and the Transactions Contemplated Therein, and (III) Granting Related Relief* [Docket No. 114] (the “Sale Motion”) filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”), as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: SunPower Corporation (8969) (“SPWR”); SunPower Corporation, Systems (8962); SunPower Capital, LLC (8450); SunPower Capital Services, LLC (9910); SunPower HoldCo, LLC (0454); SunPower North America, LLC (0194); Blue Raven Solar, LLC (3692); Blue Raven Solar Holdings, LLC (4577); BRS Field Ops, LLC (2370); and Falcon Acquisition HoldCo, Inc. (3335). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 880 Harbour Way South, Suite 600, Richmond, CA 94804.

BACKGROUND

1. Arevon Energy, Inc. is a leading renewable energy company that develops, builds, owns, and operates solar and storage projects across North America.

2. The Arevon Entities and certain of the Debtors are parties to various engineering, procurement, and construction agreements (“EPC Agreements”), operations and maintenance agreements (“O&M Agreements”), and related performance guarantees (“Performance Guarantees”). A list of certain of the EPC Agreements and O&M Agreements and related guarantees is attached as **Exhibit A**.²

3. Pursuant to the EPC Agreements, certain Debtors designed and constructed commercial solar power systems. In turn, pursuant to the O&M Agreements, certain Debtors perform management, operation, and maintenance services for the relevant commercial solar power systems. Under the Performance Guarantees, the relevant Debtors are obligated to pay the Arevon Entities for power generation shortfalls and reimbursement of fees paid under the O&M Agreements.

4. The Debtors are in default of their obligations under the EPC Agreements, O&M Agreements, and related Performance Guarantees. Without limitation, Solar Star Always Low Prices IL, LLC (“Solar Star”) has filed an arbitration demand against SunPower Corporation, Systems to recover damages arising from defaults under the parties’ agreements relating to fifteen (15) rooftop solar installations in Illinois. Solar Star has demanded at least \$12,268,184.16, in the arbitration, exclusive of interest and attorneys’ fees. Solar Star’s damages continue to accrue and are currently unliquidated.

² There may be additional contracts with the Debtors and their affiliates, and this list is not intended to be exhaustive.

5. On August 5, 2024 (the “Petition Date”) each of the Debtors commenced a voluntary case (collectively, these “Chapter 11 Cases”) under title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

6. On August 8, 2024, the Debtors filed the Sale Motion seeking, among other things, an order (a) authorizing and approving the Debtors’ assignment and license of certain intellectual property assets, and (b) authorizing the Debtors to enter into certain transition services agreements. Through these transactions, the Debtors seek to transition their operations and maintenance services to Enphase, Launch Servicing, and HASI (all as defined in the Sale Motion) as successor service providers.

LIMITED OBJECTION

7. The Arevon Entities file this limited objection out of an abundance of caution and to preserve all rights and remedies.

8. The Sale Motion does not specifically provide that the Debtors intend to assume or assign any operations and maintenance or other contracts to the proposed buyer and successor service providers. Furthermore, certain disclosures in the Sale Motion suggest that the transactions only relate to consumer services, and not the Arevon Entities’ commercial projects.

9. Nonetheless, the intent of the Sale Motion is to transition the Debtors’ operations and maintenance services—which may include obligations under the EPC Agreements, O&M Agreements, or even the Performance Guarantees—to successor servicers. To the extent the Debtors seek to assume or assign any of the Arevon Entities’ contracts, the Arevon Entities are entitled to all protections of the Bankruptcy Code.

10. Without limitation, pursuant to sections 365(b)(1) and (f)(2) of the Bankruptcy Code, a debtor-in-possession that seeks to assume and assign an executory contract must (i) cure,

or provide adequate assurance that it will promptly cure, any defaults in the executory contract, (ii) compensate the counterparty to the executory contract for any actual pecuniary loss to such party resulting from such defaults, and (iii) provide adequate assurance of future performance under such contract.

11. The Debtors have not offered any cure or adequate assurance of future performance with respect to the Arevon Entities' contracts and the Debtors cannot assume or assign any of such contracts without the Arevon Entities' consent. The Arevon Entities also reserve the right to assert any of their contracts are not assignable under section 365(c) and other applicable law.

12. Accordingly, should the Debtors intend to assume or assign any of the Arevon Entities' contracts, or otherwise compel the Arevon Entities to accept services from any successor servicers, the Debtors must first satisfy all requirements of section 365.

13. The Debtors' proposed Sale Order also includes provisions that could be interpreted as impairing the rights of the Arevon Entities against the Debtors and their estates. Paragraph 8 of the Sale Order provides that the "Debtors shall have no further liability with respect to the Assets, and any claims, whether administrative or otherwise, *relating to or arising from such Assets* after the closing of the sale asserted against the Debtors shall be deemed disallowed" (emphasis added).

14. As set forth in the Sale Motion, the Assets relate to the Debtors' operations and maintenance and servicing businesses and the Sale Order should clarify that the Arevon Entities' rights and claims against the Debtors, their estates, and any other parties that may be liable under the Arevon Entities' contracts, including without limitation insurers or assignees of such contracts, are not impaired by the Sale Order.

RESERVATION OF RIGHTS

15. The Arevon Entities file this Limited Objection out of an abundance of caution and will attempt to resolve this matter with the Debtors in advance of any hearing.

16. The Arevon Entities do not release or waive any claim, right or remedy arising under their contracts, the Bankruptcy Code, or other applicable law. Without limitation, the Arevon Entities expressly reserve the right to assert that amounts due and owing to the Arevon Entities are administrative expense claims under section 503 of the Bankruptcy Code and other applicable law. Similarly, the Arevon Entities reserve the right to assert and recover any claims from the Debtors, the Debtors' insurers, and any other non-debtor entities.

Dated: August 23, 2024

By: /s/ James B. Bailey
BRADLEY ARANT BOULT CUMMINGS LLP
James B. Bailey (*pro hac vice* and association with local
counsel to be filed)
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Counsel for the Arevon Entities

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2024, I electronically filed the foregoing with the Clerk of the Court and served the following using the CM/ECF system which will electronically transmit notification of such filing to CM/ECF participants in the above referenced case.

/s/ James B. Bailey

OF COUNSEL

EXHIBIT A

- Engineering, Procurement and Construction Contract by and between Solar Star Always Low Prices IL, LLC and SunPower Corporation, Systems, dated September 27, 2019
- Management, Operations and Maintenance Agreement by and between SunPower Corporation, Systems and Solar Star Always Low Prices IL, LLC dated September 27, 2019
- Operations & Maintenance Agreement by and between SunPower Corporation, Systems and Kern High School District Solar (2), LLC dated November 30, 2016
- Performance Guaranty Agreement by and between SunPower Corporation, Systems and SunPower Commercial Holding Company II, LLC for the Distributed Generation 2 Portfolio dated January 22, 2016 (Updated 12/14/2016)
- Performance Guaranty Agreement by and between SunPower Corporation, Systems and SunPower Commercial Holding Company II, LLC for the Distributed Generation 2 Portfolio dated January 22, 2016 (Updated 09/28/2017)
- Omnibus Project Operation, Maintenance and Asset Management Continuity Agreement (Macy's/UCD) among SunPower Corporation, SunPower Corporation, Systems, SunPower Capital Services, LLC, SunPower Commercial Holding Company I, LLC and Wells Fargo Wind Holdings, LLC dated June 19, 2015
- Operations & Maintenance Agreement among SunPower Corporation, Systems, Solar Star California XXX, LLC and Solar Star California XXX(2), LLC dated June 19, 2015
- Performance Guaranty Agreement by and between SunPower Corporation, Systems Solar Star California XXX, LLC and Solar Star California XXX(2), LLC for the Macy's Solar Project dated June 19, 2015
- Amended and Restated Engineering, Procurement and Construction Agreement by and between SunPower Corporation, Systems Solar Star California XXX, LLC and Solar Star California XXX(2), LLC dated June 19, 2015
- Operations & Maintenance Agreement by and between SunPower Corporation, Systems and Solar Star California XXXII, LLC dated June 19, 2015
- Management Agreement between SunPower Capital Services, LLC and SunPower Commercial Holding Company I, LLC dated June 19, 2015
- Contractor Performance Security Guaranty Agreement by and between SunPower Corporation and Solar Star California XXXII, LLC executed by SunPower Corporation on June 15, 2015
- Performance Guaranty Agreement by and between SunPower Corporation, Systems and Solar Star California XXXII, LLC for the UC Davis Solar Project dated June 19, 2015

- Amended and Restated Engineering, Procurement and Construction Agreement by and between SunPower Corporation, Systems and Solar Star California XXXII, LLC dated June 19, 2015
- Amended and Restated Engineering, Procurement and Construction Agreement by and between SunPower Corporation, Systems and Northstar Macys Maryland 2015, LLC dated May 6, 2016
- Operations & Maintenance Agreement by and between SunPower Corporation, Systems and Northstar Macys Maryland 2015, LLC dated May 6, 2016
- Performance Guaranty Agreement by and between SunPower Corporation, Systems and Northstar Macys Maryland 2015, LLC for the Macy's Maryland Solar Project dated May 6, 2016